

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

DENNIS R. WEIR,)
vs.)
Plaintiff,)
vs.)
JONAH J. WHITE, an individual and)
MATTHEW G. JULIAN, an individual,)
et al.,)
Defendants.)
No. 15-cv-223

JOINT MOTION TO ENFORCE SETTLEMENT

Come now the Defendants, Matthew G. Julian, by and through his attorneys, Mormino, Velloff & Snider, P.C., and Jonah J. White, an Individual, and Billy Bob Teeth, Inc., by and through their attorneys, Lucco, Brown, Threlkeld & Dawson, LLP, for their Joint Motion to Enforce Settlement agreement, state the following:

1. That following the discovery of this cause of action, which included interrogatories, requests to produce and the depositions of the parties, the parties agree to settle this case completely on February 9, 2016 on terms and conditions, including a monetary payment to Plaintiff, that were memorialized in an agreed-upon, confidential written settlement agreement (which Defendants can submit *in camera* for the Court's review).

2. That attached hereto and incorporated by reference are letters from the Plaintiff's counsel, Ralph Davis, confirming the parties' agreement to all of the terms and conditions of settlement and, further, to the final, execution version

of the formal settlement and release agreement. See attached Exhibits "A", "B" and "C").

3. That the parties' counsel exchanged and reviewed drafts of a proposed settlement and release agreement and agreed upon a final, execution version of same, as reflected in Plaintiff's counsel's email that is attached hereto as Exhibit C. Defendants executed the agreed-upon settlement agreement and the same was forwarded to Plaintiff's counsel for execution by Plaintiff. Plaintiff's counsel has reported to Defendants' counsel that the settlement agreement was provided to Plaintiff and that he has refused to sign and return it, notwithstanding his acceptance of the terms thereof. As of this filing, the signed agreement has not been returned by Plaintiff, despite repeated requests for its execution and return.

4. That Plaintiff's counsel has communicated to Defendants' counsel that he personally is a witness to the fact that a settlement agreement was duly entered and that Plaintiff had communicated to his counsel the authority to accept the settlement terms. Plaintiff's counsel, therefore, has acknowledged that he is a witness to the fact of settlement and to the issues presented by this motion and, further, that, upon the filing of this motion, he will seek to withdraw as Plaintiff's counsel (because of his role as a witness) and, if requested by appropriate process, would produce documentation reflecting Plaintiff's communicating his acceptance of the settlement.

5. That, under the foregoing facts, as reflected in the exhibits hereto, a binding settlement agreement was entered between the parties. Through their authorized representatives, each of the parties communicated his/its assent to all

of the negotiated terms. An oral settlement agreement, like other oral contracts, is governed by principles of contract law. Oral agreements are and shall be binding so long as there is an offer, an acceptance, and a meeting of the minds as to the terms of the agreement. *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 313, 914 N.E.2d 617, 624 (1st Dist. 2009). Moreover, here, this is not only a situation where there was emailed confirmation of the acceptance of terms that had been orally communicated, there was an explicit agreement reflected in writing – an email from Plaintiff’s counsel (Exhibit C) – that the formal *written* settlement and release agreement, which set forth all of the settlement terms, was accepted and approved. The agreed-upon terms are not questioned.

6. That the written settlement and release agreement provides in part: “In the event of legal proceedings in connection with the enforcement of this Agreement, the prevailing party therein shall be entitled to recover all reasonable costs and expenses incurred by such party in connection therewith, including, without limitation, reasonable attorneys’ fees.” Accordingly, based on the fees provisions in the parties’ agreement, as well as on the bad faith and frivolousness of Plaintiff’s refusal to consummate the agreed settlement, Defendants request an award of attorneys’ fees in connection with the instant motion.

7. That a settlement conference is currently scheduled for April 21, 2016 before the assigned Magistrate Judge, and moving Defendants respectfully request that, in light of the instant motion and the already-agreed settlement, the settlement conference be vacated pending resolution of this motion. Defendants

are willing to present live testimony, including the testimony of Plaintiff's counsel Ralph Davis, in support of this motion at a hearing, should this Court deem it warranted.

WHEREFORE, the Defendants pray that this Honorable Court enter an Order enforcing the agreed-upon settlement of this case, and thereby direct the Plaintiff to execute the settlement and release agreement and all parties to comply with the terms and conditions thereof, including the monetary consideration due Plaintiff, less an amount awarded Defendants for the fees and costs associated with the instant motion, and for such other relief as the Court may find proper.

Respectfully submitted,

"/S/" Samuel A. Mormino, Jr.
Samuel A. Mormino, Jr.
Attorney for Defendant Julian
3517 College Avenue
Alton, IL 62002
Phone: (618) 465-2541
Fax: (618) 462-4032
E-mail: usdc@mveslawyers.com
06196239

"/S/" Wayne D. Skigen
Wayne D. Skigen
Attorney for Defendants White &
Billy Bob Teeth, Inc.
224 St. Louis Street
Edwardsville, IL 62025
Phone: (618) 656-2321
Fax: (618) 656-2363
E-mail: wskigen@lbtdlaw.com
06275930

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Certificate of Service

I hereby certify that on April 1, 2016, I electronically filed Defendants, Matthew G. Julian, Jonah J. White and Billy Bob Teeth, Inc.'s Joint Motion to Enforce Settlement with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to the following:

Ralph D. Davis

Wayne D. Skigen

Respectfully submitted,
"/S/" Samuel A. Mormino, Jr.
Samuel A. Mormino, Jr.
3517 College Avenue
Alton, IL 62002
Phone: (618) 465-2541
Fax: (618) 462-4032
E-mail: usdc@mveslawyers.com
06196239